

## **Licensing Act Application Hearings**

The Licensing Act 2003 requires that any application to vary any element of an existing licence or application for a new licence has to be the subject of public consultation. The applicant is required to post a notice on the premises in a prominent position advising of the application and place an advert in a local newspaper to inform local residents and businesses of the application.

The Licensing Department advises local District Councillors and Parish/Neighbourhood Councils of New and Variation applications received by the Department. They have 4 weeks from the date the application is submitted to make a representation.

For any representation to be “relevant” it must address one or more of the Licensing Objectives which are: -

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

If relevant representations are made then the Licensing Authority is obliged to hold a hearing to determine the application. The application will be determined on the evidence available at the hearing that demonstrates whether or not the Licensing Objectives are being upheld.

The Council will invite the first four persons to make representations to present their evidence at the hearing. It is important that if you make representations that you have the evidence that demonstrates support to your case. It is also important that if you are invited to attend the hearing that you make every effort to do so in order to strengthen your case. If several people living close to each other are all making representations then come together and agree one person to speak on everyone’s behalf. You will have tow minutes to make your case and it is suggested that you do not repeat verbatim your written evidence but highlight the key issues. You should then be prepared to answer points of clarification resulting from questions from members of the Licensing Sub-Committee.

# **Procedures for Hearings under the Licensing Act 2003**

## **1. Introduction**

- 1.1 This procedure note sets out how hearings to be held by Horsham District Council in its role as Licensing Authority under the Licensing Act 2003 will be conducted. The Hearings Regulations 2005 also regulate the conduct of hearings and this Code should be read in conjunction with those regulations.
- 1.2 The Code applies to all hearings under the Licensing Act 2003 to be heard by the Licensing Sub Committee (referred to as the LSC) of Horsham District Council's Licensing Committee.

## **2. Objectives**

- 2.1 Hearings will be conducted to ensure that they are managed in an efficient, fair and transparent way. Hearings will focus on areas of the application which are in dispute. The LSC is under an obligation to disregard information which is not relevant to the application, representation or notice or to licensing objectives.

## **3. How Licensing Applications will be dealt with**

- 3.1 Licensing Applications under the Licensing Act will be dealt with in one of 2 ways:
  - \* a LSC of 3 members of the Licensing Committee
  - \* by Licensing Officers within the delegations of the Licensing committee as set out in the Council's Statement of Licensing Policy, December 2004.
- 3.2 Following an application to the Licensing Authority, hearings may arise following a relevant representation in respect of the following:
  - \* to grant, transfer, review or vary a premises licence
  - \* for a provisional statement
  - \* to grant, review or vary a club premises certificate
  - \* to grant, renew a personal licence
  - \* for conversion of an existing licence or club registration certificate during the transition period
- 3.3 Hearings may also arise if:
  - \* Cancellation of an interim authority following a police objection
  - \* Objection notice following a police objection to a temporary event notice
  - \* Convictions coming to light after grant or renewal of a personal licence
- 3.4 Where it is not possible to resolve a relevant representation the Licensing Authority must:
  - \* arrange a public hearing within the prescribed timescales for the type of Application as laid down by regulations
  - \* notify relevant parties of forthcoming hearing within prescribed time limits
  - \* provide applicants with copies of relevant representations

## **4. How representations are dealt with**

- 4.1 Generally, any interested party or responsible authority may make written representations about an application for a licence premises or certificate. These must be made within strict time limits, and late ones will only be accepted in very exceptional circumstances.
- 4.2 A copy of all relevant representations will be provided to the applicant. The papers for the LSC hearing will be available to the press and public. Correspondence submitted anonymously will not be considered.
- 4.3 Members of the LSC will not enter into correspondence or discussions with applicants, their agents or representatives, other interested parties or responsible authorities about the merits of the applications they may be called upon to decide.
- 4.4 If there are no relevant representations made to the Council, then a licence must be granted, subject to conditions consistent with the operating schedule submitted with the application and the mandatory conditions required by legislation.
- 4.5 Representations that are found to be vexatious, frivolous or repetitive will not be heard and the writer of such will be notified.
- 4.6 In the case of an application for a review of a licence the Licensing Authority will consider an application to be repetitive where more than one request in any one 12 month period, relating to the same licensing objective is made. Exceptions may be made where there are exceptional circumstances.

## **5. Setting the Hearing Date**

- 5.1 In view of the requirements to hold hearings with specified time limits, the Licensing Authority will be unable to enter into discussions to identify dates convenient to all parties concerned.
- 5.2 The Licensing Authority will give notice of a hearing and the notice may specify any points the Licensing Authority would like to be clarified at the hearing.

## **6. Reply to Notice of Hearing & wishing to speak**

- 6.1 Any party receiving a notice of hearing, must give the Licensing Authority, within the time period specified, a notice of whether they intend to attend or be represented at the hearing, or whether they consider a hearing to unnecessary. Any interested party wishing to speak must register their right to do so. If they fail to do so, they will not be allowed to speak.
- 6.2 The LSC can only allow a maximum of 4 interested parties to speak. Interests will be registered on a first come first served basis. Anyone wishing to speak after 4 parties have registered will have their details recorded, and would be advised to attend the hearing in case a previously registered party fails to attend.
- 6.3 Additionally, such later parties will be advised of the 4 parties registered so that they are able to discuss amongst themselves any changes to the speakers they may wish. Any change should be notified and be accompanied with the consent of all parties. The Applicant or his agent will be informed if someone registers to speak. The names and addresses of those wishing to speak may be given to other people who share their views and have expressed a wish to address the LSC.

## **7. Non Attendance at Hearings**

- 7.1 If a party to a hearing has given notice of attendance at a hearing, but fails to attend the Sub Committee, the hearing will proceed in that party's absence unless the Sub Committee considers it in the public interest to adjourn the hearing to a later date.
- 7.2 Where a hearing is held in the absence of a party, any written representations made by that party will be considered by the Sub Committee at the hearing.

## **8. Visits to Premises**

- 8.1 In certain situations a visit to premises may prove useful. This will depend on the purpose of the hearing and the level of information that is otherwise available. However, care needs to be taken to ensure that the visit does not prejudice the hearing, by evidence being presented at the visit. The purpose of the visit is to allow the Members of the LSC to be familiar with the physical layout and surroundings of the premises. The visit may be accompanied or unaccompanied. If accompanied all parties entitled to be heard at a hearing will be asked if they wish to attend. If unaccompanied then permission to inspect the premises will be sought from the applicant, but the applicant may not speak to the LSC on any application matters whilst the LSC attend the premises in question.

## **9. Documentary Evidence & Summary of representations**

- 9.1 Copies of the documentary evidence or written information to be presented at the hearings should be submitted to the Licensing Authority in accordance with the timescales stipulated. Parties to a hearing should also submit a written summary, lasting no more than 2 minutes, of all the information they intend to present at the hearing. There is a separate leaflet that deals with what should be in your summary ('Speaking at a Licensing Act 2003 Hearing' leaflet).
- 9.2 The Licensing Authority will forward copies of evidence and information to other parties to the hearing.
- 9.3 The LSC may only consider evidence submitted late at a hearing, if all the parties agree to its late submission.

## **10. Petitions**

- 10.1 Where an objection is made by an association or local residents group the chairman/secretary of association shall either confirm in writing at the hearing or before hand then the objection is made by a duly authorised officer on behalf of association or group.
- 10.2 Petitions shall bear the prayer of that petition on each page and a warning to potential signatories that the Council will supply a copy of the petition to the applicant. Each person signing the petition should also print his/her name and address. Each page of the petition should be dated.

## **11. Public Hearings**

- 11.1 The Hearings will be in public. The Sub Committee may exclude the public from the hearing if it considered it in the public interest to do so. Any party to a hearing may be assisted or represented by any person whether legally qualified or not.

## **12. What to expect at a Hearing**

- 12.1 If a party is intending to speak at a hearing then they should attend the at least 20 minutes prior to the start time and introduce themselves to the Committee Clerk. Once attendance has been confirmed, a party may seat themselves in the public gallery part of the Committee Room. There is a seating plan which identifies where all parties are expected to sit. This plan will be posted near the place where the hearing is to take place. Parties are asked to ensure that they adhere to the seating plan when their application/ representation is to be heard. A copy of the plan is available on request.
- 12.2 The LSC will hear the application or applications in order. The Chairman of the LSC will introduce himself and the other Members of the LSC. The Council's Legal Officer will then run through the hearing procedure.
- 12.3 The Council's Licensing Officer will then present his report to the LSC. The report will detail the applications the background, it will also provide an ordnance sheet indicating the location of the applicant's premises, the interested party's/ies premises and if relevant other premises within a suitable radius which are licensed either as night cafes or for public entertainment or liquor. The Officer can be questioned by the Sub Committee on matters relating to matters in the report only.
- 12.4 When a party is asked to speak they will be invited to attend the speakers chair, the desk has a microphone and a timing device that will alert the speaker when their 2 minutes have expired. When making their statement, a speaker must give their full name and address. After they have done so they will be asked to make their statement and informed of the start of their 2 minutes. After a party has finished they may be questioned by the Sub Committee and should remain in their chair until it is confirmed that there is nothing further for them.
- 12.5 There is then a running order for hearing all relevant parties:
- \*Statutory Consultees - Any Statutory Consultees may then make any comments/objections and call any evidence to support
  - \*Local Member - A local member wishing to make a submission on the application will be invited to do so by the Chairman
  
  - \*Applicant - The Chairman, through the Licensing Officer will then invite the Applicant /representative to present their position and call any evidence if needed. Evidence will only be considered necessary if any issue needing clarification or explanation
  
  - \*Objector - The Chairman, through the Licensing Officer will then invite the Objector/s who has objected in accordance with the rules governing applications and who has asked to speak in accordance with the Council's right to speak procedure. There will only be 4 Objectors allowed to speak and call any evidence if needed. Evidence will only be considered necessary if any issue needing clarification or explanation.

## **13. The Hearing Procedure**

- 13.1 The Licensing Authority will run hearings in line with the Council's procedure for public speaking at its Committees. The hearing procedure is:
- a. that parties are seated in the right places and are confirmed to be those that have a right to speak

- b. the parties will be allowed a maximum of 2 minutes to make their representations/submission. Any witness that a speaker may wish to call on, on any point, will also only have 2 minutes. The LSC may limit the number of witnesses being called if they are not experts in a field or otherwise.
- c. there will only be a maximum of 4 interested parties (objectors) allowed to speak on an application.
- d. The applicant may be allowed further time if there are a number of interested parties who wish to speak. However, such time will be proportionate and it is hoped would not exceed 6 minutes in total (including the standard 2 minutes).
- e. The timings are strict and people will be stopped at the cut off time.
- f. The LSC cannot take into account any documentary or other information produced by any party to support their position if it has not been previously produced. It will only do so at the hearing with either the consent of all the parties or in exceptional circumstances.
- g. The interested parties are reminded that the LSC will not attach weight to volume of oral submissions and that the LSC is only able to consider the effect on the four Licensing Objectives.
- h. The LSC will not generally permit cross examination unless the LSC considers that such is required for it to consider the representations, application or notice. Any such request for permission should be considered very carefully and made once all parties have made their representations.
- i. The running order will be Licensing Officer presents his report, the statutory consultees make their representations, Ward Councillors make their representations, applicant makes his representations, and interested parties will then make theirs.
- j. The LSC may ask questions of any party throughout as may the Council's Legal Officer. The LSC may give permission for a party or an officer to ask a question if it would assist them in arriving at a determination.
- k. Finally, in order to ensure all parties receive a fair hearing the time limits imposed or any part of this procedure may be waived, altered or modified by the LSC as appropriate.
- l. Finally, the Chairman of the LSC has responsibility for the smooth running of the hearing and his decision on procedural matters is final.

## **14. Slander**

- 14.1 All parties are reminded that they should avoid derogatory or defamatory statements. The laws of slander are very strict. If in public something is said which is not true, even if the maker believes it to be true, the maker could face legal action by the party who he attacks. Therefore parties need to be very careful about what they say. Councillors are able to speak more freely and bluntly in Committee or Council than member of the public. Parties are all reminded that swearing during a hearing will not be acceptable, and any party conducting themselves in such a manner will be stopped and could be asked to leave if the behaviour persists.

## **15. Presentation of Information**

- 15.1 Each party will clarify any points raised by the LSC and give further information in support of their representation, notice or application. Questions about the

information may be asked by the LSC. Cross examination will not be allowed unless the LSC deem it necessary in the interests of justice.

- 15.2 The Sub Committee will seek to focus the hearing on the promotion of the licensing objectives that gave rise to the hearing and avoid straying into undisputed areas. The information should therefore be relevant and relate to the representation, notice or other determination to be considered and to the promotion of the licensing objectives.
- 15.3 Where more than one representation has been made, the party making the representation should avoid duplicating the points made by other parties although they may briefly state their agreement with them.
- 15.4 Generally, the parties may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation.

## **16. Late Representations/objections/New matters**

- 16.1 No additional material in support of the application, representation or notice may be taken into account by the LSC if such material has not been produced and circulated by the producer to all parties concerned.
- 16.2 An objector will not be allowed to raise any matter not referred to in the written objection lodged by the Objector unless there are exceptional reasons for so doing and the Objector is able to justify why the new material should be placed before the LSC.
- 16.3 Late objections will not be allowed except in exceptional circumstances.
- 16.4 If for some reason it has not been possible to have all material circulated prior to the hearing for a good reason - the LSC can consider the new material and may wish to adjourn to allow all parties to consider it and reply.
- 16.5 The Chairman would need to consider the request for late submission/introduction of new material. He needs to ask all parties for their views and the Sub-Committee will need to make a ruling on the request. If all the parties consent to the late production then the material can be admitted then there is not an issue.
- 16.4 Any such application to introduce new matters will be open to representations by the applicant, their representative as to whether such matter should be considered. When both parties have made representations the LSC will decide whether the new material should be allowed as evidence.
- 16.5 Late production of material which will lead to adjournment should be discouraged.
- 16.6 When considering such a request additional material must be disregarded where , it is not relevant to the licensing objectives it reveals a new ground of representation, it is not relevant to the application, representation or notice lodged
- 16.7 The LSC may adjourn proceedings where it considers it necessary for its consideration of any application, representations or notice made or where it considers it to be in the interests of justice.

## **17. Adjournments**

- 17.1 The LSC may adjourn a hearing to a specified date if it considers that it is in the public interest. In such a case the Council will notify all relevant parties of the reasons for the adjournment, the date, time and venue of the adjourned hearing.

## **18. Exclusions**

- 18.1 Whilst hearings will normally be conducted in public the LSC does have power of exclusion (which covers the press, the public and even applicants, parties and their representatives) in appropriate circumstances.

## **19. Announcement of Determination & Notification**

- 19.1 If the LSC has made its determination immediately after the hearing, it will announce its decision to the parties present.
- 19.2 Written notification of the determination will be sent out to the parties. Notifications will include information about the rights of appeal against the determination made.
- 19.3 Where there is a discrepancy between the announcement of the decision and the written notification, the written notification will take precedence.

### Speaking at a Hearing under the Licensing Act

This general note has been produced to provide parties with a very brief guide on speaking at a hearing.

1. You should arrive at least 20 minutes before the hearing and register with The Committee Clerk.
2. When you are called to speak you must:
  - Sit in the speaker's chair which has the timer lights on the desk
  - When asked to, give you full name and address and if representing someone or a group, say who.
  - You will be told when your time starts and you should then make your 2 minute statement
3. You are only allowed to speak for 2 minutes, you will be told to stop when your 2 minutes are completed. You must stop then.
4. When making your statement, please do not swear or use or make abusive or slanderous language or comments.
5. To make the best use of the time that you have please be brief and to the point. You may find it helpful to rehearse what you have to say to ensure that everything is included. Many people find that to write it down is the best thing to do – this way nothing is ever forgotten and the Licensing Sub 6. Committee has your statement in front of them, which saves them writing it down.
6. You cannot introduce new matters or evidence. If you have not said it before you cannot say it now.